

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH SCOTT WRIGHT ,

Petitioner,

v.

PIERCE COUNTY,

Respondent.

Case No. 3:22-cv-5672-JCC-TLF

ORDER TO SHOW CAUSE

This matter comes before the Court on petitioner's application to proceed *in forma pauperis* and proposed habeas petition filed under 28 U.S.C. § 2254. Dkt. 1. Petitioner is proceeding *pro se*, and the petition has not been served on respondents.

Under Rule 4 of the rules governing § 2254 cases, the Court must promptly examine a habeas corpus petition when it is filed, and if it plainly appears from the petition and its attachments the petitioner is not entitled to relief, the Court must dismiss the petition.

It appears that the petition – on its face – is subject to dismissal. The Court will provide petitioner the opportunity, by November 11, 2022, to show cause why the federal habeas corpus petition should not be dismissed.

FACTUAL BACKGROUND

Petitioner appears to be a pretrial detainee at Pierce County Jail. Dkt. 1-1. Petitioner alleges that in 2016 he pled guilty to one count of unlawful solicitation to

1 possess a controlled substance. Dkt. 1-1 at 1-2. The petition states that petitioner has
2 not sought to appeal this conviction to a higher state court and has not filed a petition for
3 certiorari in the United States Supreme Court. Dkt. 1-1 at 2-3. Petitioner contends that
4 intervening authority from the Washington State Supreme Court has invalidated
5 petitioner's conviction. Dkt. 1-1 at 3.

6 Petitioner states that the Pierce County Superior granted a motion to vacate
7 based on the Washington Supreme Court's decision in *State v. Blake*, 197 Wn.2d 170
8 (2021). Dkt. 1-1 at 3. Further, petitioner contends that the prior sentence violated
9 petitioner's rights, and petitioner did not previously appeal the sentence because
10 petitioner had not been aware of the relevant authority. Dkt. 1-1 at 5-12. Petitioner
11 seeks as a remedy the dismissal of three criminal cases pending before the Pierce
12 County Superior Court and monetary damages. Dkt. 1-1 at 15.

13 DISCUSSION

14 A prisoner may only use habeas corpus "when they seek to invalidate the
15 duration of their confinement – either *directly* through an injunction compelling speedier
16 release or *indirectly* through a judicial determination that necessarily implies the
17 unlawfulness of the State's custody." *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005)
18 (emphasis in original). Additionally, when a prisoner seeks to challenge the very fact or
19 duration of their physical imprisonment, and seeks immediate or speedier release, their
20 sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500
21 (1973). "A civil rights action, in contrast, is the proper method of challenging conditions
22 of confinement." *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (internal quotations
23 and citations omitted).

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2 A. In Custody Requirement

3 Based on the proposed petition, it appears that the Court lacks jurisdiction over
4 this petition because petitioner is no longer in custody pursuant to the challenged
5 judgment.

6 As a threshold matter, a § 2254 petitioner must show that they are in custody
7 pursuant to a state court judgment. *Lackawanna Cty. Dist. Att’y v. Coss*, 532 U.S. 394,
8 401 (2001) (quoting 28 U.S.C. § 2254(a)). A petitioner is “in custody” when the
9 petitioner suffers “present restraint from a conviction” at the time the petition is filed.
10 *Maleng v. Cook*, 490 U.S. 488, 490-92 (1989). If a petitioner is not in custody pursuant
11 to the challenged judgment, the Court lacks subject matter jurisdiction over the petition.
12 *Brock v. Weston*, 31 F.3d 887, 889 (9th Cir. 1994). When the conviction or sentence
13 under attack has fully expired at the time of the petition is filed, the petition does not
14 meet the “in custody” requirement. *Maleng*, 490 U.S. at 492.

15 A petitioner is “in custody” if he is subject to a significant restraint on his liberty
16 that is not generally shared by the public. *Dow v. Circuit Court of the First Circuit*, 995
17 F.2d 922, 923 (9th Cir. 1993) (per curiam). Being “in custody” thus includes being on
18 probation (*Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005)) and other situations
19 in which one’s freedom is “significantly confine[d] and restrain[ed].” *Jones v.*
20 *Cunningham*, 371 U.S. 236, 243 (1963).

21 It appears from the petition that petitioner is no longer in custody pursuant to the
22 challenged judgment. The petition indicates that petitioner is challenging a 2016
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1 conviction under the case number 16-1-00326-7. Dkt. 1-1 at 1. Petitioner states that the
2 Pierce County Superior Court vacated this conviction. Dkt. 1-1 at 3.

3 If the state court has in fact vacated the conviction and petitioner is no longer
4 incarcerated based on the vacated judgment, petitioner is not in custody for purpose of
5 a habeas petition.

6 Based on the foregoing, it appears that the Court lacks jurisdiction over this
7 petition because petitioner is not in custody based on the challenged conviction.

8 B. Exhaustion

9 To the extent that petitioner is still in custody pursuant to the 2016 conviction, it
10 appears that the petitioner is also subject to dismissal for failure to exhaust all state
11 court remedies.

12 A state prisoner is required to exhaust all state court remedies, by fairly presenting
13 claims of violation of federal rights before the state courts, before seeking a writ of federal
14 habeas corpus. 28 U.S.C. § 2254(b)(1). The exhaustion requirement is a matter of comity,
15 intended to afford the state courts the “initial opportunity to pass upon and correct alleged
16 violations of its prisoners’ *federal* rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971)
17 (emphasis added). This is appropriate, because “state courts, like federal courts, are
18 obliged to enforce federal law.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999). To
19 properly exhaust federal claims, a would-be federal habeas corpus petitioner must finish
20 “one complete round of the State’s established appellate review process,” up to the
21 highest state court with powers of discretionary review. *Id.*, at 845.

22 A federal court must dismiss a federal habeas corpus petition if its claims are
23 unexhausted. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). This Court has the *sua*
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1 *sponte* authority to examine the question of exhaustion at this stage of review. *Campbell*
2 *v. Crist*, 647 F.2d 956, 957 (9th Cir. 1981) (“This court may consider whether state
3 remedies have been exhausted even if the state does not raise the issue”).

4 Petitioner acknowledges that he has not appealed his underlying criminal
5 conviction. Petitioner must raise the grounds for relief contained in his habeas petition to
6 the Washington Court of Appeals and Washington Supreme Court before his petition is
7 eligible for federal habeas review.

8 C. Younger Abstention

9 The pending petition also appears to be subject to dismissal under the Younger
10 Doctrine because petitioner is requesting that the Court intervene in pending criminal
11 proceedings before the Pierce County Superior Court.

12 Federal courts must abstain from interfering in pending state criminal
13 prosecutions absent extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37, 45
14 (1971). This applies when “(1) there is an ongoing state judicial proceeding; (2) the
15 proceeding implicates important state interests; (3) there is an adequate opportunity in
16 the state proceeding to raise constitutional challenges; and (4) the requested relief
17 seeks to enjoin or has the practical effect of enjoining the ongoing state judicial
18 proceeding. *Bean v. Matteucci*, 986 F.3d 1128, 1133 (9th Cir. 2021) (quoting *Page v.*
19 *King*, 932 F.3d 898, 901-02 (9th Cir. 2019)).

20 The Ninth Circuit has recognized that even if all the *Younger* factors are satisfied,
21 a federal court will not invoke *Younger* if the petitioner can make a showing of bad faith,
22 harassment, or some other extraordinary circumstances making abstention
23 inappropriate. *Bean*, 986 F.3d at 1133; *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th
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1 Cir. 2018) (acknowledging an irreparable harm exception to the *Younger* abstention
2 doctrine when the danger of irreparable loss is great and immediate.); *see also*,
3 *MacDonald v. Musick*, 425 F.2d 373, 377 (9th Cir. 1970) (Ninth Circuit reversed the
4 District Court and directed that a habeas corpus petition be granted under 28 U.S.C. §
5 2241 pre-trial, because petitioner's due process rights were violated by a deputy
6 prosecutor's revival of a charge that was "[an] attempt. . .to hamper [petitioner] in
7 asserting, by civil action, both state and federal civil rights").

8 The Ninth Circuit has applied the irreparable harm exception to claims raised by
9 pretrial detainees:

10 (1) where a pretrial detainee presents "[a] colorable claim that a state
11 prosecution [would] violate the Double Jeopardy Clause" *Dominguez v.*
Kernan, 906 F.3d 1127, 1131 n. 5 (9th Cir. 2018)

12 (2) where a petitioner raises a due process challenge to their pretrial
13 detention in the context of a state civil sexually violent predator
proceeding. *Page v. King*, 932 F.3d 898, 901-902 (9th Cir. 2019).

14 (3) where a petitioner raises a due process claim based on the forcible
15 injection of antipsychotic medications during trial. *Bean*, 986 F.3d at 1135-
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16 The courts have refused to apply this exception to speedy trial claims because this right
17 can be vindicated by the reversal of the improper conviction, while unlawful pretrial
18 detention cannot be vindicated post-trial. *Bean v. Matteucci*, 986 F.3d 1128, 1134 (9th
19 Cir. 2021).

20 This action satisfies the factors for the Court to abstain from considering
21 petitioner's claims under the *Younger* doctrine. Petitioner requests that the Court
22 dismiss three pending criminal cases currently before the Pierce County Superior Court.
23 Dkt. 1-1 at 15. The proposed petition does not explain whether these pending cases are
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1 related to challenged 2016 state judgment. The pending criminal proceedings implicate
2 an important state interest – enforcing and prosecuting state laws. There is no indication
3 that petitioner would be unable to raise in state court any constitutional challenges
4 during the pending criminal trials. The requested relief would have the practical effect of
5 enjoining the ongoing state judicial proceeding.

6 Accordingly, the Court must abstain from considering this action -- unless
7 petitioner can make a showing that extraordinary circumstances exist and the
8 irreparable harm exception applies to this case. Petitioner has not made a showing of
9 extraordinary circumstances such that the Younger doctrine should not be applied.

10 D. Monetary Damages

11 It also appears that petitioner seeks to obtain monetary relief as remedies for
12 allegations that may be related to assertions of civil rights violations or tortious acts
13 under state law alleged in this petition. Dkt. 1-1, at 15. The District Court's habeas
14 corpus jurisdiction is limited to a challenge to the legality of petitioner's custody – and
15 the remedy is limited to the fact or duration of confinement; therefore, remedies such as
16 damages, or an injunction, are not available. *Preiser v. Rodriguez*, 411 U.S. 475, 499-
17 500 (1973). The petitioner is required to remove those allegations of harm that are not
18 related to the fact of, or the duration of, his confinement -- and is required to remove the
19 requests for damages or injunctive relief -- if he decides to file an amended habeas
20 corpus petition.

21 If petitioner wishes to pursue damages or injunctive relief as remedies for alleged
22 civil rights violations or state law torts, a different cause of action might be appropriate,
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1 under 42 U.S.C. § 1983 or other federal or state laws. Those remedies are not
2 cognizable in a federal habeas corpus petition.

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5 CONCLUSION

6 Based on the foregoing discussion, the petition appears to be facially deficient
7 and subject to dismissal. The Court orders petitioner to file an amended petition
8 correcting – if possible – the deficiencies identified herein, or show cause in writing why
9 this petition should not be dismissed. Petitioner must file an amended petition or show
10 cause by **November 11, 2022**.

11 If petitioner intends to file a civil rights complaint (rather than challenging the
12 validity of his conviction and sentence, and the fact or duration of custody), petitioner
13 must bring an independent lawsuit and a different complaint; he cannot amend the
14 current habeas petition to include civil rights allegations.

15 Dated this 17th day of October, 2022.

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18 Theresa L. Fricke
19 United States Magistrate Judge
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